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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Regarding
Policies, Procedures and Rules for the
California Solar Initiative, the Self-Generation
Incentive Program and Other Distributed
Generation Issues.

Rulemaking 10-05-004
(Filed May 6, 2010)

**JOINT PETITION FOR MODIFICATION OF DECISIONS 11-09-015, 15-06-002,
AND 19-08-001 BY PACIFIC GAS AND ELECTRIC COMPANY (U 39 E),
SOUTHERN CALIFORNIA GAS COMPANY (U 904 G), SOUTHERN
CALIFORNIA EDISON COMPANY (U 338 E), AND CENTER FOR
SUSTAINABLE ENERGY® CONCERNING SELF-GENERATION INCENTIVE
PROGRAM EXTENSIONS, SERVICE WARRANTY REQUIREMENT, AND
ONGOING DEVELOPER FLEET COMPLIANCE OBLIGATIONS**

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TABLE OF CONTENTS

	Page
I. INTRODUCTION AND SUMMARY OF REQUESTED RELIEF	1
II. RELEVANT FACTS	2
III. DISCUSSION	3
A. Proposed Modification to Provide Additional Time to Submit Program Documentation	4
1. Regulatory Background	4
2. Relief Requested and Justification for the Relief	4
3. Recommended Changes to Decision Language.....	5
B. Proposed Modification to Allow Waiver of the Program Service Warranty Requirement under Limited Circumstances.....	5
1. Regulatory Background	5
2. Relief Requested and Justification for the Relief	6
3. Recommended Changes to Decision Language.....	7
C. Proposed Modification for Relief from PA Enforcement Obligations re Specific Developer Compliance Requirements under Limited Circumstances	7
1. Regulatory Background	7
2. Relief Requested and Justification for the Relief	8
3. Recommended Changes to Decision Language.....	8
IV. CONCLUSION.....	9
 DECLARATION OF BRIAN BISHOP IN SUPPORT OF THE JOINT PETITION FOR MODIFICATION OF DECISIONS (D.) 11-09-015, 15-06-002, AND 19-08-001	 10

TABLE OF AUTHORITIES

Page

COMMISSION RULES OF PRACTICE AND PROCEDURE

<i>Rule 16.4</i>	1, 2
<i>Rule 1.8(d)</i>	1
<i>Rule 13.10</i>	2

COMMISSION DECISIONS AND RULEMAKINGS

<i>Decision 01-03-073</i>	3, 6
<i>Decision 11-09-015</i>	<i>Passim</i>
<i>Decision 15-06-002</i>	1, 3, 4, 5
<i>Decision 19-08-001</i>	1, 3, 7, 8
<i>Decision 21-03-009</i>	5

MISCELLANEOUS

<i>11 USC § 1141(d)(1)</i>	2
<i>2022 SGIP Handbook v1, Section 5.4.2 (3)</i>	6

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PROGRAM EXTENSIONS, SERVICE WARRANTY REQUIREMENT, AND
ONGOING DEVELOPER FLEET COMPLIANCE OBLIGATIONS**

I. INTRODUCTION AND SUMMARY OF REQUESTED RELIEF

Pursuant to Rule 16.4 of the Rules of Practice and Procedure of the California Public Utilities Commission (CPUC or Commission), Pacific Gas and Electric Company (PG&E), on behalf of Southern California Gas Company (SoCalGas), Southern California Edison Company (SCE) and Center for Sustainable Energy® (CSE) (collectively the SGIP Program Administrators, or PAs),¹ respectfully submits this Joint Petition for Modification (Petition) of Decisions (D.) 11-09-015, D.15-06-002, and D.19-08-001 (the Decisions).

Through this Petition, the PAs request that they be authorized, under specific and rare circumstances, to grant exceptions to the extensions, service warranty requirement, and other ongoing developer fleet compliance obligations established by the Decisions in order to disburse SGIP incentives to certain customers for their installations of eligible SGIP projects. Specifically, these exceptions would be granted only under circumstances where a customer, who qualified for an SGIP incentive and has installed a project that has otherwise met all program requirements, subsequently loses the ability to satisfy these requirements through no

¹ Pursuant to Rule 1.8(d) of the Commission's Rules of Practice and Procedure, PG&E has been authorized to submit this Joint Petition on behalf of SoCalGas, SCE and CSE.

fault of their own due to unexpectedly and permanently losing contact with their developer due to the developer declaring bankruptcy or otherwise going out of business.

Pursuant to the requirements set forth in Rule 16.4, PG&E submits a declaration on behalf of the SGIP PAs (Attachment A) providing relevant or new facts to support the relief requested herein. The PAs were not able to file this Petition within one year of the effective date of the Decisions because the recent circumstances necessitating an exception to the extensions, service warranty requirement, and ongoing developer fleet compliance obligations were not anticipated and did not occur until last year following the bankruptcy filing by an SGIP developer, Petersen Dean, Inc. (“Petersen Dean”).²

II. RELEVANT FACTS

Petersen Dean began submitting applications for SGIP projects in 2017 for energy storage projects primarily in the residential sector. To date, there have been approximately 1,720 SGIP applications submitted under Petersen Dean’s developer credentials statewide. Approximately 270 of these applications are currently active projects.³

On June 11, 2020, Petersen Dean filed for Chapter 11 Bankruptcy.⁴ Petersen Dean’s bankruptcy proceeding is ongoing, and although it has not yet been discharged of all debts, the status of the SGIP-related warranties Petersen Dean issued prior to obtaining a discharge is questionable.⁵

This bankruptcy has prevented numerous customer projects that have been installed and are operational from receiving their SGIP incentives⁶ as they are now unable to satisfy two SGIP requirements, while also hindering the PAs’ enforcement of a third program rule. They are:

² Pursuant to Rule 13.10, the PAs request that the Commission take official notice of the Petersen Dean, Inc. bankruptcy, filed in United States Bankruptcy Court, District of Nevada (Case No. 2:20-BK-12821), jointly administered with In Re: Beachhead Roofing and Supply Inc., (Bankr. D. Nev. 2:20-BK-12814).

³ Per SGIP Real-Time Public Report, available at www.selfgenca.com. Data as of May 6, 2022.

⁴ Bankr. D. Nev. 2:20-BK-12821, Dkt. #1 (filed June 11, 2020).

⁵ See Bankr. D. Nev. 2:20-BK-12821. See also 11 USC § 1141(d)(1).

⁶ Bishop Decl., ¶ 3.

- Restrictions on the number of extensions, as specified in D.11-09-015 and modified in D.15-06-002;
- Warranty requirements, as first adopted for SGIP per D.01-03-073 and further revised in D.11-09-015; and
- Developer fleet compliance requirements, as specified in D.19-08-001.

As a result of Petersen Dean's bankruptcy, the PAs have been unable to pay incentives on the approximately 270 active Petersen Dean projects due to the projects' failure to meet the above three requirements.⁷ This problem has affected customers in all PA territories in various stages of the SGIP application process due to no fault of the customer.⁸ Additionally, the PAs have recently been made aware of at least one other defunct developer that may also become unable to honor its warranty obligations, resulting in its customers being in a similar situation to the Petersen Dean customers.⁹ This sequence of events, which were only first presented to the PAs following Petersen Dean's bankruptcy, has highlighted program barriers for these customers who unexpectedly and permanently lose contact with their developer due to the developer declaring bankruptcy or otherwise going out of business. The PAs seek to remove these barriers as discussed below.

III. DISCUSSION

This Petition for Modification identifies three changes that are needed to provide relief to customers who unexpectedly and permanently lose contact with their developer due to the developer declaring bankruptcy or otherwise going out of business:

- A. The need for additional time for such customers to submit program documentation;

⁷ Per SGIP Real-Time Public Report, available at www.selfgenca.com. Data as of 05-06-2022.

⁸ Bishop Decl., ¶ 3. Per SGIP Real-Time Public Report, available at www.selfgenca.com, 55 projects are in Incentive Claim Form (ICF) Review, ICF Technical Review, ICF Suspended, or ICF Inspection/Inspection Suspended status, and 217 are in Reservation Request Form (RRF) Confirmed, RRF Review, and RRF Suspended status. See 2022 SGIP Handbook v1, available at www.selfgenca.com, for a description of ICF and RRF statuses. Data as of 05-06-2022.

⁹ Bishop Decl., ¶ 4.

B. The need for such customers to be released from program service warranty requirements; and

C. The release from specific developer non-compliance PA enforcement obligations.

For each of these, the PAs, through this Petition, provide:

1. The regulatory background;
2. The relief requested and justification for such relief; and
3. The recommended modifications to prior decision language.

A. Proposed Modification to Provide Additional Time to Submit Program Documentation

1. Regulatory Background

To encourage customers reserving SGIP incentives to proceed with their projects, and to avoid reserving funds for stalled projects which could be utilized by other customers, SGIP sets specific milestones that customers must meet to remain eligible for the program. However, SGIP also allows customers to request up to three six-month extensions if customers experience delays that are out of their control.

D.11-09-015 originally addressed SGIP extensions. That decision provides: “Extensions: All projects must be limited to one, six-month extension. A request for second extension should be made to the SGIP Working Group for approval.”¹⁰ D.15-06-002 then granted a Petition for Modification and amended this language. D.15-06-002 stated: “Attachment A, page 5 of Decision 11-09-015 is modified to read: ‘All projects shall be limited to a maximum of three six-month extensions. Any requests for second and third extensions shall require unanimous SGIP Working Group approval’.”¹¹

2. Relief Requested and Justification for the Relief

In the event a customer unexpectedly and permanently loses contact with their developer due to their developer declaring bankruptcy or otherwise going out of business after submitting

¹⁰ D.11-09-015, Ordering Paragraph (OP) 1 adopting Attachment A, p. 5

¹¹ D.15-06-002, OP 3.

the Reservation Request Form but before submission of the Incentive Claim Form, the PAs request the ability to grant a 90-day extension to allow the customer to complete their incentive request. This extension may be in addition to the three six-month extensions that are afforded by D.15-06-002 if the project has already taken advantage of those extensions.

This additional time is justified because D.11-09-015 and D.15-06-002 do not contemplate the situation in which a developer unexpectedly and permanently becomes non-responsive to the customer due to the developer declaring bankruptcy or otherwise going out of business. The additional time will allow a customer to work with the PA to complete the Incentive Claim Form and submit all necessary documents. It will also help to mitigate customer satisfaction concerns, as customers in this situation are likely already frustrated by a non-responsive developer. At the same time, it is reasonable because it affords a limited amount of time for the customer to act – the customer must be motivated to work with the PA to gather the necessary documentation.

3. Recommended Changes to Decision Language

To effectuate this request, the PAs propose the following modifications (additions in double underline, deletions in strikethrough): D.11-09-015, Attachment A, p. 5, as modified by D.15-06-002, OP 3, be modified to read:

Extensions: All projects shall be limited to a maximum of three six-month extensions, plus a 90-day extension in the event a developer becomes unexpectedly and permanently non-responsive due to bankruptcy or otherwise going out of business before completing the required documentation. Any requests for second, third, or fourth ~~and third~~ extensions shall require unanimous SGIP Working Group approval.¹²

B. Proposed Modification to Allow Waiver of the Program Service Warranty Requirement under Limited Circumstances

1. Regulatory Background

Warranty requirements have existed in SGIP dating back to 2001; they are important to ensure that ratepayer and customers' investments perform as expected and that the program

¹² Per OP 2 of D.21-03-009, OP 3 of D.15-06-002 has also been modified to allow the PAs to grant a stay on the cancellation of a project due to issues related to the COVID-19 pandemic.

delivers the grid benefits and greenhouse gas (GHG) emissions reductions to justify SGIP incentives. D.01-03-073 first adopted a warranty requirement for SGIP to “...ensure continued operation and reliability of the system, and... encourage manufacturers and vendors to offer high quality products.”¹³ D.11-09-015 then directed the warranty requirement be revised to a 10-year parts and service warranty.¹⁴

As a result, the most recent version of the SGIP Handbook states:

As part of the Executed Contract, all storage systems are required to include a minimum 10-year service warranty. A service warranty ensures proper maintenance and continued project performance. The service warranty must cover the system maintenance to include (but not limited to) system support, problem diagnosis, on-site repair and preventative maintenance. The warranty should also include language to guarantee the continued performance of the system over the warranty period. The System Owner must provide proof of warranty and maintenance contract, and specify the warranty and maintenance contract start and end dates.¹⁵

2. Relief Requested and Justification for the Relief

The PAs request that they be authorized to waive the service warranty requirement on a case-by-case basis, in the event a customer’s service warranty is rendered unenforceable in narrow circumstances where the developer, who was responsible for the service portion of the warranty, will no longer honor the service warranty due to bankruptcy or otherwise going out of business. This waiver would be granted at the discretion of the SGIP Working Group and only apply to the service warranty; the manufacturer’s warranty would continue to be required by the program for the 10-year warranty period. Under these circumstances, the PAs would also require the customer to acknowledge that they (a) are choosing to move forward with only a manufacturer’s warranty that may lack certain service warranty activities, and (b) remain obligated to keep their system operational for the program’s 10-year requirement.

¹³ D.01-03-073, p. 34.

¹⁴ D.11-09-015, OP 1 and Appendix A specify a 10-year warranty, though they do not reference either parts or service. PG&E Advice 3245-G/3923-E, submitted in compliance with D.11-09-015, OP 2, clarifies the warranty requirement would be implemented as applying to both parts and service.

¹⁵ 2022 SGIP Handbook v1, Section 5.4.2(3).

This request is reasonable because waiver of the service warranty under the circumstances described above would only apply to a small percentage of projects -- specifically, those where the developer will no longer honor a service warranty due to bankruptcy or otherwise going out of business, and where customers have installed projects but have yet to receive their SGIP incentive due to no fault of their own. Moreover, the service warranty waiver poses little risk to ongoing operation or basic consumer protections as it would be granted only for customers whose systems have already been installed and who have the motivation to ensure their system functions optimally, and the requirement for a 10-year manufacturer's warranty would remain in place.

Finally, from a consumer protection perspective, if a service warranty waiver was not allowed, the current SGIP rules would require the PAs to reject these customers' applications. This would leave customers who had expended significant sums of money on a project and expected an SGIP incentive to be denied their incentive because their now defunct developer can no longer honor the service warranty. Such an outcome would be inherently unfair to the customer.

3. Recommended Changes to Decision Language

To effectuate this request, the PAs propose the following modifications (additions in double underline, deletions in strikethrough):

D.11-09-015, Attachment A, p. 5 be modified to read:

Warranty: ten-year ~~equipment and service~~ warranty required. ~~Exceptions to the service warranty portion of the requirement may be made only in cases where the provider of the service warranty can no longer honor it due to bankruptcy or otherwise going out of business. Any exceptions to this requirement shall require unanimous SGIP Working Group approval.~~

C. Proposed Modification for Relief from PA Enforcement Obligations re Specific Developer Compliance Requirements under Limited Circumstances

1. Regulatory Background

D.19-08-001 adopted operational requirements for installed SGIP energy storage systems to help ensure that they reduce GHG emissions. Specifically, it required developers' ongoing

project fleet to maintain operational requirements during projects' 10-year lifespan to ensure an annual reduction in GHG emissions and minimum cycling requirements. D.19-08-001 also adopted enforcement oversight by the PAs, obligating the PAs to issue infractions for a developer's failure to meet these program requirements.¹⁶

2. Relief Requested and Justification for the Relief

The PAs' authority to penalize developers who have declared bankruptcy or otherwise gone out of business for failure to comply with the operational requirements is of no consequence to those defunct developers. The PAs seek to be relieved of the obligation to enforce penalties against developers who have declared bankruptcy or otherwise gone out of business when the developer's projects are out of compliance with program GHG rules. This request is reasonable because other program mechanisms will continue to support GHG reduction by SGIP participants, including requiring participants to enroll on a time-varying rate plan and solar pairing alternatives.¹⁷

For the purposes of program impact evaluation, the PAs believe that it is important to continue reporting. Therefore, the PAs request approval to include these projects that were yet-to-be paid at the time a developer declared bankruptcy or otherwise went out of business with the fleet of projects that already exist for that developer. This comes with the understanding that the defunct developer is no longer actively monitoring the performance of its fleet. This request, for the purposes of program impact evaluation reporting, will combine installed projects that are pending payment with the fleet of projects that already exist for that same developer who has declared bankruptcy or otherwise gone out of business. This evaluation report will clearly delineate projects where the developer is no longer able to monitor the fleet performance.

3. Recommended Changes to Decision Language

To effectuate this request, the PAs propose the following modifications (additions in double underline, deletions in strikethrough):

¹⁶ D.19-08-001, Attachment A.

¹⁷ D.19-08-001, Attachment A at pp. 6-7.

D.19-08-001, Attachment A, p. 8 be modified to read:

Enforcement Mechanism

The PAs shall clearly state in the SGIP handbook that new residential SGIP systems are required to reduce GHG emissions and that developers that do not provide requested documentation to evaluators or PAs regarding new residential customer's storage systems or rates within the requested time frame shall be subject to infractions and possible suspension. Exceptions to PA infraction obligations may be made in cases where penalties are rendered unenforceable due to a developer bankruptcy or otherwise going out of business. Any exceptions to this requirement shall require unanimous SGIP Working Group approval.

IV. CONCLUSION

For the customer situations described above, current SGIP policy would require the PAs to cancel their incentive reservations. In the interest of honoring good faith efforts made by customers to adopt energy storage through SGIP, the requested modifications are needed to adequately serve customers whose developer has declared bankruptcy or otherwise gone out of business. Therefore, the PAs respectfully request that the Commission grant this Petition and allow the PAs to grant the requested exceptions for extensions, from the service warranty requirements, and from the GHG operational requirements, effective upon approval of this Petition. If granted, the SGIP PAs would subsequently propose the necessary modifications to the SGIP Handbook via a Tier 1 Advice Letter.

Respectfully submitted on behalf of the SGIP Program
Administrators,

ASHLEY E. MERLO

By: /s/ Ashley E. Merlo

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Dated: May 20, 2022

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
DECLARATION OF BRIAN BISHOP IN SUPPORT OF THE JOINT PETITION FOR
MODIFICATION OF DECISIONS (D.) 11-09-015, 15-06-002, AND 19-08-001

I, Brian Bishop, declare as follows:

1. I am the Principal Program Manager on behalf of Pacific Gas and Electric Company (PG&E) for the Self Generation Incentive Program (SGIP). As such, I have the responsibility for overseeing the management and operation of SGIP for PG&E, who is a Program Administrator (PA) of SGIP. I have personal knowledge of the facts and representations stated herein and, if called upon to testify, could and would do so, except for those facts expressly stated to be based upon information and belief, and as to those matters, I believe them to be true.

2. I provide this declaration in support of the Joint Petition for Modification (PFM) on behalf of the SGIP PAs, specifically, PG&E, Southern California Gas Company (SoCalGas), Southern California Edison Company (SCE), and Center for Sustainable Energy® (CSE) [collectively Joint Program Administrators or Joint PAs], which seeks relief from specific SGIP program requirements as currently set forth in D. 11-09-015, D. 15-06-002 and D. 19-08-001.

3. On information and belief, Petersen Dean, Inc. (“Petersen Dean”) filed a petition for bankruptcy in or about June 2020. As a result of Petersen Dean’s bankruptcy, the PAs have been unable to pay incentives for numerous reserved projects (on which Petersen Dean was the project developer) due to no fault of the customer. This inability stems from two problems: (1) the lack of a developer to progress and complete an application on the customer’s behalf; and (2) the project’s inability to satisfy the service warranty requirement—which is provided by the project developer— as first adopted in D.01-03-073 and further specified in D.11-09-015. In addition, the PAs’ ability to enforce developer fleet compliance requirements as specified in D. 19-08-001 is hindered in circumstances where the project developer declares bankruptcy or otherwise goes out of business. These problems, which have affected customers in all PA territories, were only first presented to the PAs as a result of Petersen Dean’s bankruptcy.

4. In addition to Petersen Dean's bankruptcy, I am informed and believe that at least one other developer may also become unable to honor its service warranty obligations, resulting in its customers being in a similar situation to Petersen Dean's customers.

5. The Joint PFM seeks the authority to provide relief to customers whose developer declares bankruptcy or otherwise goes out of business and have been left in a situation where they are unable to receive their SGIP incentive through no fault of their own.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed on May 18, 2022, at Albany, California.

/s/ Brian Bishop
BRIAN BISHOP